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IN THE CIRCUIT COURT OF PRINCE EDWARD COUNTY,  
VIRGINIA.STATE FEMALE NORMAL SCHOOL v. MARY E. BURGER AND  
OTHERS.

**Statutes—Construction—Purpose or Object of Law.**—One of the rules for the construction of statutes is that the attention of the legislature is to be gathered from the whole act bearing in mind carefully the object in view.

**Eminent Domain—Who May Exercise the Power—State Institutions.**—Under § 1105f of the Virginia Code of 1904, subsection 25 which provides that any institution of the state may condemn any land, buildings, structures, etc., necessary to be taken and used for its purposes, a state institution as well as a railroad company may condemn a dwelling house in the exercise of the right of eminent domain, delegated to it by the legislature. And such right is not confined to railroad companies by subsection 3 of the same act which provides that no company shall under any provision of this act, invade the dwelling house of any person in a city or town or any space within sixty feet thereof, without the consent of the owner, except in the case of a railroad company.

On motion to dismiss condemnation proceedings, made by defendants.

*Richard E. Byrd*, of Richmond, for the plaintiff.

*J. Tinsley Coleman*, of Lynchburg, for the defendants.

GEORGE J. HUNDLEY, JUDGE.

The only question to be considered by the Court, at this stage of the case, is as to whether, under any circumstances, a State institution can condemn a dwelling house in the exercise of the right of eminent domain, delegated to it by the Legislature?

The law relating to the subject is all contained in chap. 46 B. of Pollard's Code, § 1105f, and the authority to condemn property is conferred on State institutions by subsection 25.

Under this subsection, corresponding with § 1074 of the Code of 1887, any institution of the State may condemn "any land, buildings, structures, sand, earth, gravel, water or other material, necessary to be taken and used for the purposes of such county, city or town, or school district, or for the purposes of the institution for the deaf and blind, or of any such State hospital, or of the University of Virginia, or of the Virginia Military Institute, or of any other State institution." This section also provides that the "*proccdings*" in all such cases shall be according to the provisions of this act so far as they can be applied to the same.

In subsection 3 is found the authority to condemn, conferred

on "any company chartered by this State \* \* \* to condemn lands or any interest or estate therein, or materials or other property for its uses. \* \* \* But no company shall, under any provision of this act, invade the dwelling house of any person in a city or town or any space within sixty feet thereof, without the consent of the owner, except in the case of a railroad company," etc.

It is contended by the petitioner that the authority to condemn the dwelling house in question is to be found plainly given in subsection 25, and the defendant, Mary E. Burger, contends that under the terms of the act taken as a whole, only a railroad company has authority to condemn a dwelling, and that public corporations or State institutions are not expressly accorded the right to condemn a dwelling house, and that under the last clause of subsection 25, they are restricted to the stringent provisions of subsection 3. In support of this contention defendant invokes the well known doctrine laid down in the case of *Charlottesville v. Maury*, 96 Va. 386, where it is said: "There is no better settled rule of law than this, that statutes which encroach on the personal or property rights of the individual are to be strictly construed, and this is specially the case where it is claimed that the statute delegates to a corporation, whether municipal or private the right of eminent domain, one of the highest powers of sovereignty, pertaining to the State itself, and interfering seriously, and oftentimes vexatiously, with the ordinary rights of property." It devolves upon the Court therefore to construe the terms of the statute itself so as to settle this disputed question. This Court keenly appreciates the full force of the argument in favor of the time-honored veneration of the dwelling or home, coming down to us from our ancestors and held no less sacred by ourselves. Unless, therefore, the authority is to be found, from a fair and reasonable construction of the language of the law itself, thereby giving effect to the clearly expressed intention of the Legislature, the petitioner must be denied the right to condemn this dwelling even though it may be necessary for its uses. Let us first, then, notice the difference in the language of the two subsections 3 and 25. Section 3, in fixing the subject upon which it is to operate, uses the words: "lands, or any interest or estate therein, or materials or other property." Comprehensive enough surely, and if it had stopped there it could hardly be questioned, that a dwelling house might be taken, but dwelling houses were expressly forbidden to be "invaded" by a subsequent clause, and then followed an exception in favor of railroads. Thus clearly showing that the Legislature knew that the general words used must be held by the Courts to include dwelling houses, though not expressly mentioned, and

therefore they, in the same section, limited those words, and plainly excluded dwelling house.

Coming now to the words used in subsection 25 we find the Legislature, in defining the property to be affected, using the words: "land, *buildings*, structures," etc. Applying to this language the most stringent rule of strict construction, it must be admitted that the word "buildings" is a generic term, including of necessity dwelling houses. Are we to assume that the Legislature which enacted this statute was less intelligent than the Legislature which enacted § 1072 of the Code of 1887? or shall we assume that the Legislature of 1902-3-4 did not understand what they were doing when they used language so different in subsection 25, from that used in subsection 3, and if they intended to except dwelling houses in the section in regard to State institutions, they were so careless as not to make the manifest restriction as used in subsection 3?

The intention of the Legislature is to be gathered from the whole act bearing carefully in mind the object in view. In § 3, the Legislature made an exception to an exception in favor of railroads, and the reason is obvious. Railroads were accorded this high privilege, because they are quasi public corporations—because they are great public conveniences—because they affect great public interests, and because they have become almost a part of the life of the State itself.

Is not this true, likewise of State institutions? Owned by the State, supported by the State and governed by the State, they enter into its life. Why should the State deny to them the right to expand with their growth, and to protect their inmates, it may be from injurious or immoral influences, by taking such property as stands in the way of their best interests, at a fair valuation?

Has the State done this? Clearly not by a fair interpretation of the language used in reference to the property to be taken. The only remaining question is, has it done so in the concluding sentence of subsection 25 in reference to the "proceedings" to be had in condemning property?

It is contended for the defendant that a strict construction of the statute requires the Court to give that word "proceedings" the broadest possible meaning, so as to make condemnation by a State institution not only conform as near as may be in execution to the preceding provisions of the act governing procedure, but also to read into subsection 25 the words of restriction imposed upon "companies" by subsection 3.

Thus the State, having expended millions of dollars on these institutions of charity and of learning, and knowing that all of them are located in towns—knowing that they are surrounded by dwelling houses—is supposed to have effectually tied its own

hands, to have restricted the growth of its own institutions, or to have put them at the mercy of those who may desire to make unconscionable exactions for their property; the Court does not so construe the law, and decides that the petitioner may proceed in this case in the mode prescribed by law in reference to this property. This opinion is hereby made a part of the record in this case.

#### Note.

There is a serious doubt in our minds of the correctness of this decision, because it seems to us that, except as to railroad companies, the legislature contemplated that when a dwelling house was needed for the purpose of an incorporated company it should be acquired by contract.

And it does not necessarily follow because the carrying out of an authorized work would be impossible, unless the power of eminent domain were exercised, that therefore the legislature intended to grant the right to exercise it. *Thacher v. Dartmouth Bridge Co.*, 18 Pick. (Mass.) 501.

The rule laid down in *Charlottesville v. Maury*, cited in the opinion, is so well settled as hardly to need the citation of an authority, namely, that in order for a corporation to exercise the power of eminent domain the right must be granted by express terms or by necessary implication. Therefore all acts relating to the taking of private property are to be strictly construed and not extended by implication. To use the language of the court, we do not think the authority is to be found, "from a fair and reasonable construction of the language of the law itself."

While it is true the word "buildings" includes dwelling houses, yet the court admits that the meaning of this statute must be gathered from the whole act and not merely from one isolated section. Likewise that this act must be strictly construed. But in the face of this it imputes an intention to the legislature which, to our mind, by express terms in subsection 3, seems to be exactly contrary to their intention. How could language be clearer when the statute says that no company shall, under any provision of this act, invade the dwelling house of any person in a city or town or any space within sixty feet thereof, without the consent of the owner, except in the case of a railroad company? The reason for according this privilege to a railroad company is too obvious for argument, and to our mind the decision in the principal case is another of the many instances in this state of judicial legislation.